IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 27TH SEPTEMBER 2006 / 5TH ASWINA 1928

FAO.No. 125 of 2006()

AS.52/2001 of SUB COURT, HOSDRUG
OS.556/1998 of MUNSIFF COURT, HOSDRUG

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APPELLANT

M.SREEDHARAN, AGED 32 YEARS,
S/O.LATE THEYI, RESIDING AT ALAKKOT ADUKKATHIL,
P.O.PAKKAM, PANAYAL VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS:

K.V.KUMARAN, AGED 43 YEARS,
S/O.AMBU VAIDYAR, SUB STAFF, VIJAYA BANK,
RESIDING AT `USHAS', PAKKAM, P.O.PAKKAM,
PANAYAL VILLAGE, HOSDURG TALUK, KASARAGOD
DISTRICT.

BY ADV. SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 27/09/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J

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F.A.O. NO. 125 Of 2006

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Dated this the 27th day of September, 2006

J U D G M E N T

The defendant in a suit for specific performance on the agreement for sale is the appellant. He challenges an order of remand passed in a First Appeal.

2. The respondent-plaintiff, faced with denial of execution of agreement for sale, filed I.A.No.2080/2000 before the trial court, to sent document for examination by an expert. That application was allowed. Stated to be on account of paucity of funds, the plaintiff could not carry out that order. The suit was ultimately dismissed.

3. In this first appeal, the plaintiff filed yet another application as I.A.No.167/2004 to send the document for examination by an expert. Without relegating the hearing of that application, along with the appeal, the lower appellate court dismissed that application. However, when the lower appellate court heard the appeal of the plaintiff on it's merits, it came to the conclusion that expert evidence regarding the documents is absolutely essential. Accordingly, the impugned order of

remand is passed directing the trial court to proceed from the stage of the I.A.No.2080/2000 and to take follow up action on the said application and issue order enabling the plaintiff to bring in expert evidence.

4. Having heard counsel for the parties, I am satisfied that no grounds, much less, any substantial question of law, arises to interfere with impugned order of remand. If I were to consider the substantial question suggested on behalf of the appellant, to wit, as to whether the dismissal of I.A.No.167/2004 of the lower appellate court would result in res judicata, the applications to bring in expert evidence are merely applications of procedural nature and they do not decide any questions arising between the parties, as regards the case, on its merits.

However, having faced the litigation in two costs, followed by an order of remand, without being provided also with an order of costs. Having regard to the totality of the facts and circumstances of the case, it is directed that the impugned order of remand will stand on condition that the respondent pays the appellant/defendant an amount of Rs.1,500/- as costs within a period of one month from the date of

receipt of a copy of this judgment . Subject to what is stated above, appeal fails and is hence dismissed.

THOTTATHIL B. RADHAKRISHNAN, JUDGE

SJ